

GAHC010185482023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RERA APPEAL/4/2023

SAGAR SAIKIA
S/O LATE TARA PRASAD SAIKIA,
PROPRIETOR OF M/S BALAJI INFRASTRUCTURE DEVELOPERS, R/O
HOUSE NO. 16, R- 10, PRAGATI PATH, RUPNAGAR, GUWAHATI- 781032, P.O.-
RUPNAGAR, UNDER BHANGAGARH POLICE STATION, IN THE DISTRICT
KAMRUP (METRO) ASSAM.

VERSUS

BABITA PATOWARY AND 2 ORS.
D/O MR. SAILENDRA NATH PATOWARY,
R/O HOUSE NO. 110, NIZARAPAR, BIRUBARI, GUWAHATI- 781016, DIST.-
KAMRUP (METRO), ASSAM.

2:MUKUL PATOWARY
S/O LATE PABITRA PATOWARY

R/O HOUSE NO. 13
BOLO RAM BORO PATH
BAROWARY
HAPPY VILLA
P.S.- LATASIL
GUWAHATI- 781003
DIST.- KAMRUP (METRO)
ASSAM.

3:NABAJIT PATOWARY
S/O LATE PABITRA PATOWARY

R/O HOUSE NO. 13
BOLO RAM BORO PATH
BAROWARY

HAPPY VILLA
P.S.- LATASIL
GUWAHATI- 781003
DIST.- KAMRUP (METRO)
ASSAM

Advocate for the Petitioner : MR R K MOUR

Advocate for the Respondent : MR. S K TALUKDAR

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 14-03-2024

JUDGMENT & ORDER

This is an appeal under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short, the Act of 2016) against the common judgment and order dated 28.06.2023 passed in REAT/Assam/Appeal No.02/2023 and REAT/Assam/Appeal No.03/2023. The first appeal i.e. the Appeal No.02/2023 was filed by the owner of the land and the other appeal being Appeal No.03/2023 was filed by the appellant herein who was the builder.

2. This Court finds it relevant to take note of the provisions of Section 58 of the Act of 2016 which stipulates that an appeal shall lie against any decision or order of an Appellate Tribunal on anyone or more of the grounds specified under Section 100 of the Code of Civil Procedure, 1908 (for short, the Code). Therefore, taking into account Section 100 of the Code, the appeal has to be tested as to whether there arises any substantial question of law, involved in the instant appeal. For deciding the same, this Court in brief takes into account the

following facts infra:

The respondent herein had entered into an agreement for sale on 05.08.2013 with the appellant whereby it was agreed that the Apartment Flat No.B-1 on the first floor of the building called Pabitra Enclave covering a super built up area of 800 sq.ft located at Sahar Guwahati Mouza Ulubari in the district Kamrup(M), Assam would be sold to the respondent for a consideration of Rs.18 lacs. The respondent accordingly paid an amount of Rs.8 lacs to the appellant in cash and the remaining 10 lacs into the bank account of the appellant by availing loan from the Life Insurance Corporation of India. On 21.11.2015, a letter was issued by one Balaji Infrastructure Developer addressed to the respondents whereby the appellant acknowledged the receipt of the total consideration and also indicated handing over the Flat No. B-1 to the respondent on 20.11.2015. The fact of handing over the possession by the appellant as well as the fact of taking over the possession of the Flat by the respondent is duly endorsed by both the parties in their letter dated 21.11.2015. Thereupon, certain disputes arose for which the respondent lodged an FIR before the Latasil Police Station which was registered as Latasil Police Station Case No.16/2021 under Sections 420/406 of the Indian Penal Code, alleging, *inter alia*, that the owners of the land had occupied the Flat allotted to the respondent and they refused to hand over the possession of the said Flat to the respondent and the appellant turned a deaf ear towards the request so made by the respondent. It is under such circumstances, a complaint was filed before the RERA authorities on 29.01.2022 under Section 31 of the Act of 2016. Both the appellants as well as the owners of the land were arrayed as parties to the said proceedings and they filed their written statement. The records reveal that on 12.12.2022, the RERA authorities disposed of the said proceedings thereby

directing the owner of the land, in question, who were in possession of the Flat No.B-1 to hand over the Flat to the respondent and to rectify the original sale agreement dated 05.08.2013 entered into between the appellant and the respondent.

3. Being aggrieved both the owners of the land as well as the appellant who was the builder preferred two appeals, the details of which have already been mentioned hereinabove. The said appeals were disposed of vide the common judgment and order dated 28.06.2023. It is also relevant to take note of that the Appellate authority further directed the appellants in both the appeals i.e. the land owners as well as the builder to execute a registered deed of conveyance thereby transferring the title of Flat No. B-1, 1st Floor of Pabitra Enclave located at Sahar Guwahati, Mouza Ulubari in the district Kamrup(M), in favour of the respondent herein and also to handover the peaceful physical possession of the said Flat. Further to that, the said directions were directed to be complied within four weeks from the date of the said judgment and order dated 28.06.2023. Being aggrieved, the builder, who is the appellant herein has preferred the present appeal under Section 58 of the Act of 2016.

4. In the instant appeal, one of the two land owners, who were the appellant in Appeal No.02/2023 is represented. The other land owner inspite of service, has chosen not to appear. This Court has also put a pointed query upon the learned counsel appearing on behalf of the respondent No.2 as to whether the said respondent No.2 has preferred any appeal against the judgment and order dated 28.06.2023. The learned counsel for the Respondent No.2 submitted that

to his instruction, no such Appeal has been filed.

5. In the backdrop of the above, let this Court take into account as to whether the instant appeal can be admitted by formulating the substantial questions of law as is required under Section 100(4) of the Code. From a perusal of the Memo of appeal, it reveals that three substantial questions of law had been urged. The first substantial question of law so urged is that the first appellate authority did not decide the appeal in accordance with Order XLI Rule 31 of the Code. The said substantial question of law so urged in the opinion of this Court cannot be said to be a substantial question of law involved in the instant appeal, taking into account Section 53(1) of the Act of 2016, which categorically mandates that the Appellate Tribunal shall not be bound by the procedure laid down by the Code, but shall be guided by the principles of Natural Justice. Under such circumstances, the question of deciding the said Appeal by applying the provisions of Order XLI Rule 31 of the Code cannot be said to be a substantial question of law involved in the instant appeal.

6. The remaining two substantial questions of law urged pertain to application of Article 54 and 64 of the Indian Limitation Act, 1963. This Court has duly perused the impugned judgment, wherein it is seen that the learned 1st appellate court had duly considered the said aspect of the matter. Be that as it may, this Court has also perused the Act of 2016 from where it is not seen that the provisions of Indian Limitation Act 1963 have been made applicable to a proceeding under the Act of 2016. Consequently, the two substantial questions of law so urged as regards Article 54 and Article 64 of the Indian

Limitation Act 1963 does not arise.

7. Consequently, as the appeal is devoid of any substantial question of law, this Court finds no merit in the instant appeal, for which the instant appeal stands dismissed with costs upon the Appellant which is quantified at Rs.15,000/-.

8. Registry shall forthwith return the LCR to the authority below.

JUDGE

Comparing Assistant